IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1188 OF 1998

Sou Kamal Ramesh Bhongale
Aged 25 years, Occ: Nil,
R/o. Shirsuphal, Tal, Baramati,
District : Pune. ....Petitoner.

V/s

1. Shri Ramesh Yashwant Bhongale
Age 31 years, Occ: Farmer &
Businessman, R/o. Awasari, Near
Vadapuri, Tal. Indapur, Dist. Pune.

2. Ku. Hemant Ramesh Bhongale
Aged since minor through next
Guardian Petitioner.

3. The State of Maharashtra ....Respondents.

Mr. Milind Deshmukh for the petitioner.
Mr. Rahul S. Kate for respondent No.1.
Mr. S.Y. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 13th June, 2006

ORAL JUDGMENT:

1. By this petition, the petitioner is challenging the order passed by the Judicial Magistrate, First Class, Baramati whereby he dismissed the petitioner's application for maintenance which she had filed under section 125 of the Code of Criminal Procedure. The petitioner is also challenging the order passed by the Additional Sessions Judge, Baramati who, by judgment and order dated 19/6/1998, confirmed the order of the JMFC in the Criminal Revision Application which was filed by the petitioner.

2. Brief facts which are relevant for the purpose of deciding this writ petition are as under:-

3. The marriage of the petitioner and respondent No.1 was solemnised in the year 1987. Out of the said wedlock, the petitioner gave birth to a son. It is the contention of the petitioner that soon after the marriage, respondent No.1 started demanding dowry and started harassing the petitioner. According to the petitioner, since demands of respondent No.1 were not met, he and his parents drove her out of the house and that the petitioner thereafter was residing at the house of her parents and that, in spite of efforts being taken by her parents, the respondent No.1 refused to cohabit with the petitioner and did not allow her to reside in the house. It is also the case of the petitioner that respondent No.1 performed second marriage with one Muktabai and was residing with his second wife. Therefore, she preferred application for maintenance under section 125 of the Criminal Procedure Code, claiming maintenance of Rs 500/- for herself and Rs 300/- for her son. It was submitted in the application that the respondent No.1 owned 10 to 12 acres of irrigated land. He also owned 10 to 15 jercy cows and that he owned a jeep. The

respondent No.1 filed his reply to the application and it was contended that the petitioner left the matrimonial house on her own and though a notice was given in the news paper asking her to return to the matrimonial house, she did not respond favourably.

4. The learned Magistrate recorded a finding that there was no ill-treatment given to the petitioner and there was no reason for her to leave the matrimonial house. The Magistrate further held that the agricultural land was a joint family property of the respondent No.1 and considering the sound financial position of the respondent No.1, there was no reason for demanding cash amount of Rs 20,000/- for purchasing the jeep. The Magistrate further observed that in spite of issuance of the public notice in the news paper on 18/2/1988, the petitioner did not return to the matrimonial house for cohabitation and from that conduct he held that the petitioner suo motu left the respondent No.1 and was residing at parental home on her own sweet will. The Magistrate further held that the second marriage had not been proved by the petitioner. The Magistrate, therefore, held that the petitioner did not have just and sufficient cause to reside separately from the opponent and, therefore, she was not entitled to claim maintenance from

respondent No.1. He further held that the applicant had failed to prove that the opponent had refused and neglected to maintain her. The Magistrate, however, granted maintenance to the son and directed the respondent No.1 to pay Rs 300/- per month from the date of the application. Against the said order, the petitioner preferred Criminal Revision Application before the Additional Sessions Judge. The Additional Sessions Judge dismissed the Revision Application. The Sessions Court disbelieved the version of the petitioner and held that the respondent No.1 was well-to-do person and this circumstance showed that the version of the petitioner was not probable and reliable. The Sessions Court further held that no cognizance was taken by the police and that the story of second marriage of respondent No.1 was not reliable. The Sessions Court confirmed the finding of the Magistrate and dismissed the Criminal Revision Application.

5. I have heard the learned Counsel for the petitioner and the learned Counsel for respondent No.1 at length.

6. The learned Counsel for the petitioner submitted that both the lower Courts have committed an error of

law which is apparent on the face of the record and had given a finding which was patently perverse. It is submitted that both the Courts below had clearly erred in holding that the petitioner had failed to prove that the respondent No.1 had refused or neglected to maintain her. It is submitted that, therefore, this is a fit case where judgment and order of both the lower Courts is liable to be set aside and the application filed by the petitioner should be allowed. The learned Counsel for the petitioner has filed an additional compilation annexing copy of the plaint, written statement, depositions and other documents which were produced in the trial court.

7. The learned counsel for the respondent No.1, on the other hand, submitted that the Revision Application of the petitioner was dismissed and, therefore, this Court should not interfere with the order passed by the Additional Sessions Judge in Revision Application while exercising jurisdiction under Article 227 of the Constitution of India. He submitted that both the Courts had recorded a finding of fact and this finding, therefore, should not be disturbed in writ petition.

8. I am of the view that both the lower Courts have committed a grave error while coming to the conclusion that the petitioner had failed to prove that the respondent No.1 had neglected to maintain her. After having perused the finding recorded by both the Courts below, I am of the view that the said finding is perverse inasmuch as it is based on conjectures and surmises. While considering the application which is filed under section 125 of the Cr.P.C., the Magistrate has to consider whether there has been wilful neglect or refusal on the part of husband to maintain the wife and whether the wife is unable to maintain herself. While considering such application, it is not expected that the Magistrate should appreciate the evidence as is done in civil suit. The finding of both the Courts below that the petitioner had suo motu deserted the house of respondent No.1 because she did not return back to her matrimonial house after public notice was given in the news paper by respondent No.1 is incorrect. In my view, such an inference which is drawn by the lower Courts is patently perverse. There is evidence on record to indicate that the petitioner had alleged that the respondent had married for the second time. She had also filed a complaint to that effect in the Police Station. The finding of both the lower Courts that since the cognizance was not taken

by the police of the complaint clearly indicated that it was a false complaint is, to say the least, incorrect. Merely because a public notice is given in the news paper by the husband, asking the wife to come back and reside in the matrimonial house does not prove that he has actual intention of maintaining the wife. It is a common knowledge that very often such public notices are given only in order to set up a defence in reply to the notices which are issued for maintenance of the wife.

9. The petitioner had made an allegation that the respondent No.1 started demanding money and other articles from her and on her inability to pay the amount, started ill-treating her. Both the lower Courts have observed that the respondent No.1 had 10 to 15 acres of bagayat land which was his ancestral property and he also owned a jeep. The lower Courts have observed that this indicated that he was financially well off and, therefore, did not accept the version of the petitioner by observing that,under these circumstances, as mentioned hereinabove, the version of the petitioner was not reliable.

10. After having considered the evidence on record, I am of the view that the petitioner has made out a case

for grant of maintenance and, therefore, the order passed by the lower Courts will have to be set aside and the application of the petitioner will have to be allowed. In my view, petitioner therefore is entitled to get the maintenance at the rate of Rs 300/- per month.

11. In the result, the Writ Petition is partly allowed. The judgment and order of the JMFC, Baramati in Misc. Application No. 626 of 1994 dated 16/8/1995 is set aside to the extent of dismissal of the application of the petitioner. The judgment and order of the Additional Sessions Judge in Criminal Revision Application No. 84 of 1995 is quashed and set aside. The application filed by the petitioner for maintenance under section 125 of the Cr.P.C. is partly allowed. The respondent No.1 should pay the petitioner Rs. 300/- per month as maintenance from the date of the application i.e. from 25/10/1994. This amount to be paid to the petitioner within three months. Writ petition is partly allowed in the above terms.

12. Writ Petition is accordingly disposed of.

V.M. KANADE, J.